THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.12485 of 2006

DATED:29.06.2006

Between:
K.Kondal Rao .. PETITIONER

versus

The Municipal Corporation of Hyderabad,
represented by its Commissioner,
and another. .. RESPONDENTS

WRIT PETITION NO.12485 of 2006

ORDER:

Heard the learned counsel on record.

Sri A.Sudershan Reddy, learned counsel representing the petitioner would contend that the petitioner is prepared to comply with all the conditions except condition No.5, and condition No.5 "to get clarification from A.P. Housing Board about the objection, if any" cannot be sustained since the same is violative of Articles 14, 21 and 300-A of the Constitution of India. The learned counsel also would maintain that there is no acceptable reason or any other explainable rationale behind introducing such condition. On the contrary, Smt.Jyothi Kiran, learned Standing Counsel would maintain that this condition was imposed as a safeguard to get the clarification from A.P. Housing Board about the objection, if any, and hence the same cannot be held to be bad.

This Court ordered Notice Before Admission on 22.6.2006 and directed the matter to appear in the list after one week. Thus, this matter is coming up for admission today.

The Writ Petition is filed praying for an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the condition No.5 of the proc.No.0091/CSC/TP5/2006/1093, dated 5.5.2006 of the 2nd respondent arbitrary, illegal, violative of Articles 14, 21 and 300A of the Constitution of India and without jurisdiction and pass such

other suitable orders.

It is stated that the petitioner is the owner and possessor of an extent of 1500 sq.yards of land in survey No.185 of Khairatabad Revenue village, situated at Panjagutta, near Ameerpet Cross Roads, Hyderabad and this land is part of survey No.185. The said lands along with several other lands and properties are the co-parcenary and joint family properties of M.Vittal Reddy and his paternal uncles viz., M.Raji Reddy and M.Ramachandra Reddy and their sons, and the petitioner purchased the above said land admeasuring 1500 sq.yards from M.Vittal Reddy. It is further stated that in the year 1973, the petitioner's vendor being an automobile mechanic had set up a garage in the said land. The first petitioner with the permission from the Municipal Corporation of Hyderabad constructed a shed and assessed for property tax with Municipal No.6-3-788/6/1/A. It is further stated that interruptions were caused to the petitioner's vendor by certain people, which had been specified and certain other factual details had been narrated in relation to O.S.No.176 of 1975, the suit praying for the relief of perpetual injunction. It was also further stated in relation to OS.No.95 of 1975, yet another suit. It is also further stated that after long drawn legal proceedings, the matter ended in compromise and a decree was passed on 13.8.1976. It is pertinent to mention that the suit property mentioned above fell to the share of the petitioner's vendor. Thus, the petitioner's vendor is in exclusive possession and enjoyment of the said land with the structure raised thereon even before the suit for partition was filed and continued afterwards also as the property had fallen to his share. Several other factual details also had been narrated

inclusive of OS.No.11 of 1962 and also EP.No.30 of 1977, EA.No.156 of 1981 and the other proceedings. It is also stated that the enquiry was held in the said EA and ultimately by judgment and decree dated 2.12.1991, Court of I Additional Judge, City Civil Court, Hyderabad, allowed the EA. It is also stated that the petitioner's vendor filed AS.No.212 of 1991 before the Additional Chief Judge, City Civil Court, Hyderabad, and the said appeal was allowed by judgment dated 29.7.1992. It is also stated that the matter was carried by way of Second Appeal, viz., SA.No.509 of 1992 and this Court dismissed the same by judgment dated 15.4.1993. It is further stated that the said Bapaiah had filed Special Leave Petition No.1386 of 1993 in the Supreme Court of India and the Special Leave was granted in the year 1995 and the Civil Appeal had been dismissed by the Supreme Court of India and the petitioner's vendor's title was confirmed and ultimately the property was sold to the petitioner. In paragraphs 12, 13, 14 and 15, the petitioner also had narrated how he had complied with all other conditions and in such circumstances it is stated that as far as condition No.5 to get clarification from A.P. Housing Board about the objection, if any, is concerned, cannot be complied with for the reason that the respondents are placing such unnecessary onerous burden on the petitioner and it is unjust, unreasonable and in a way arbitrary condition having no sanction of law at all. The learned counsel also would maintain that such condition is not contemplated either by the Building Regulations or by the concerned Bye Laws.

In view of the above facts, circumstances and submissions, this Court is of the considered opinion that the condition No.5, about the objection, if any, cannot be sustained. Accordingly,

the Writ Petitioner is bound to succeed.

In the result, the Writ Petition is allowed. There shall be no order as to costs.

29.06.2006

SSR